



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Higgs

Serial No.: 10/614,436

Filing Date: July 7, 2003

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)  
) Art Unit: 2644  
)  
) Examiner: D. Faulk  
)  
)  
)

For: DRIVE-IN MOVIE THEATER formerly DRIVE-IN MOVIE THEATER WITH  
SHORT RANGE SOUND SYSTEM

I hereby certify that this correspondence is being deposited with the  
United States Postal Service as first class mail in an envelope  
addressed to the Commissioner for Patents, P.O. Box 1450,  
Alexandria, Virginia 22313-1450 on:

Feb. 1, '06  
(date of deposit)

(J. John Shimazaki, Reg. No. 37,236)

**DECLARATION UNDER 37 C.F.R. 1.131**

Commissioner for Patents  
Alexandria, Virginia 22313

Sir:

This Declaration is being submitted in response to the Final Office Action dated December 1, 2005 entered in connection with the above identified application.

In the Final Office Action, the Examiner rejects the application on the grounds that Simens, U.S. Patent No. 6,832,452 (hereinafter "Simens") teaches using a huge exhibition hall or convention center at levels 7-10, and an elevated football stadium at levels 13-18.

Applicant respectfully submits, however, that the Examiner's rejection, based on Simens, is not applicable to this case, insofar as Simens is not prior art to Applicant's invention under 35 U.S.C. § 103(a). This is because Applicant conceived the invention and reduced the invention to practice prior to the effective filing date of Simens.

Here are the facts as known to Applicant:

*[Faint handwritten text, possibly "D. Faulk"]*

Upon information and belief, Simens was filed on July 28, 2002, and claims the benefit of the filing date of U.S. provisional application no. 60/308,473, filed on July 28, 2001. Therefore, upon information and belief, the effective filing date, for purposes of determining whether Simens is prior art, is July 28, 2001.

Applicant's original application (i.e., U.S. application serial no. 09/985,341), from which this application claims priority, was filed on November 2, 2001 (hereinafter "the '341 application"). Nevertheless, Applicant is in possession of evidence clearly showing that Applicant had conceived the invention and reduced the invention to practice prior to the July 28, 2001 effective filing date of Simens.

For example, Applicant attaches hereto, as Exhibit A, a copy of a fax dated March 9, 2001, wherein Betty Webster, an employee of Applicant's company, faxed a copy of the drawings that were ultimately incorporated into the '341 application, to Applicant's attorney, Mr. John Shimazaki. The cover letter specifically indicates the date of the fax, i.e., 3/9/01, both hand written on the cover sheet, and printed by the fax machine along the top. Moreover, each page of drawings contains a similar marking along the top, indicating that the fax was sent on March 9, 2001.

These fax drawings form the basis for the drawings submitted in the '341 application, and therefore, clearly indicate that Applicant had conceived the invention well before the July 28, 2001 effective filing date of Simens. In particular, it can be seen that the drawings clearly show a shopping mall with two parking garages, one with a drive-in movie theater on top, and another with an events center (Menlyn Events or arena) on top, wherein both are connected to the shopping mall or other complex.

Applicant also attaches a copy of a written description made by Applicant's attorney dated March 21, 2001, attached as Exhibit B, containing a description of the drive-in theater, mall and events center combination. This clearly shows that the combination of the shopping mall, with a drive-in movie theater and events center, located on top of two parking garages, as specified in Claim 30, had been conceived before the effective filing date of Simens. Applicant further submits that Applicant diligently filed the '341 application later that same year, i.e., by November 2, 2001, and therefore, the due diligence requirements of 37 C.F.R. § 1.131(b) have been satisfied.

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The invention had also been reduced to practice in South Africa, a WTO member country, by the effective filing date of Simens.

For the above reasons, Applicant respectfully submits that Simens is not prior art to Applicant's invention as now set forth in the pending claims, and therefore, cannot be cited and relied upon by the Examiner in rejecting the claims. Accordingly, Applicant respectfully submits that the pending claims, as amended in the attached Amendment After Final, are in condition for allowance, and earnestly requests the Examiner to enter a notice of allowance in this case.

I hereby declare that all statements made herein of my own knowledge are true and that all statement made on information and belief are believed to be true; and further that those statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,

Dated:

Jan 30 '06

  
\_\_\_\_\_  
Roy Higgs, Applicant and Inventor

DEVELOPMENT

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EXH: A

FACSIMILE TRANSMITTAL

DATE: 3/9/01 DELIVER THE FOLLOWING 7 PAGES (INCLUDING COVER) TO:NAME: John Shimazaki COMPANY: \_\_\_\_\_FACSIMILE NUMBER: 202-659-1559 PROJECT: \_\_\_\_\_SENDER'S NAME: Betty WebsterORIGINAL SENT BY MAIL: YES ☐ NO ☐

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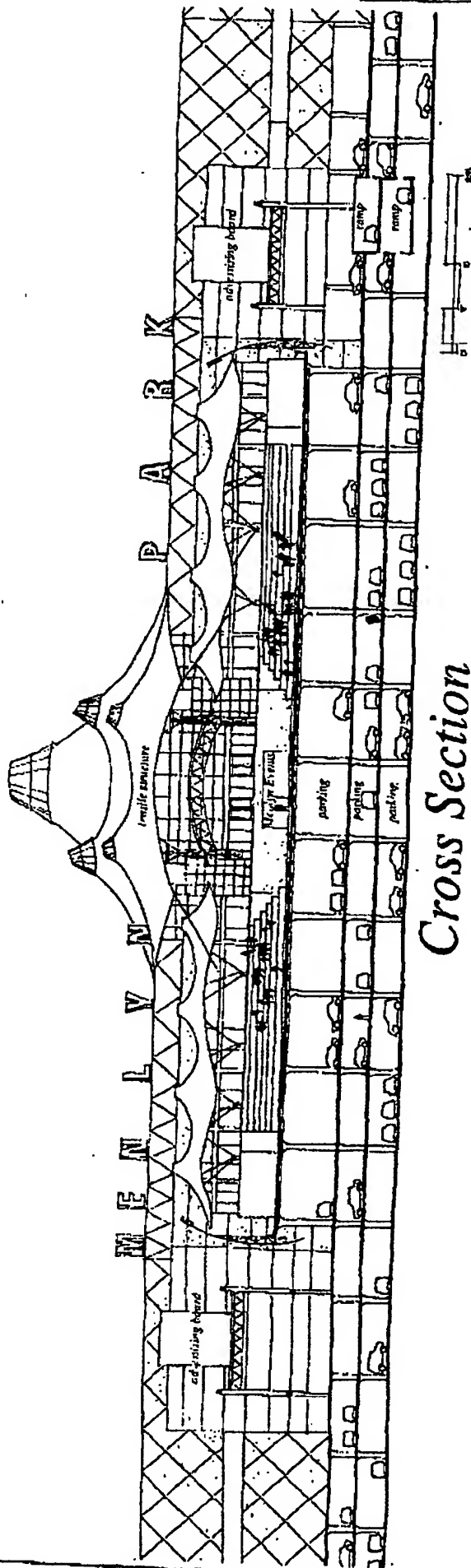
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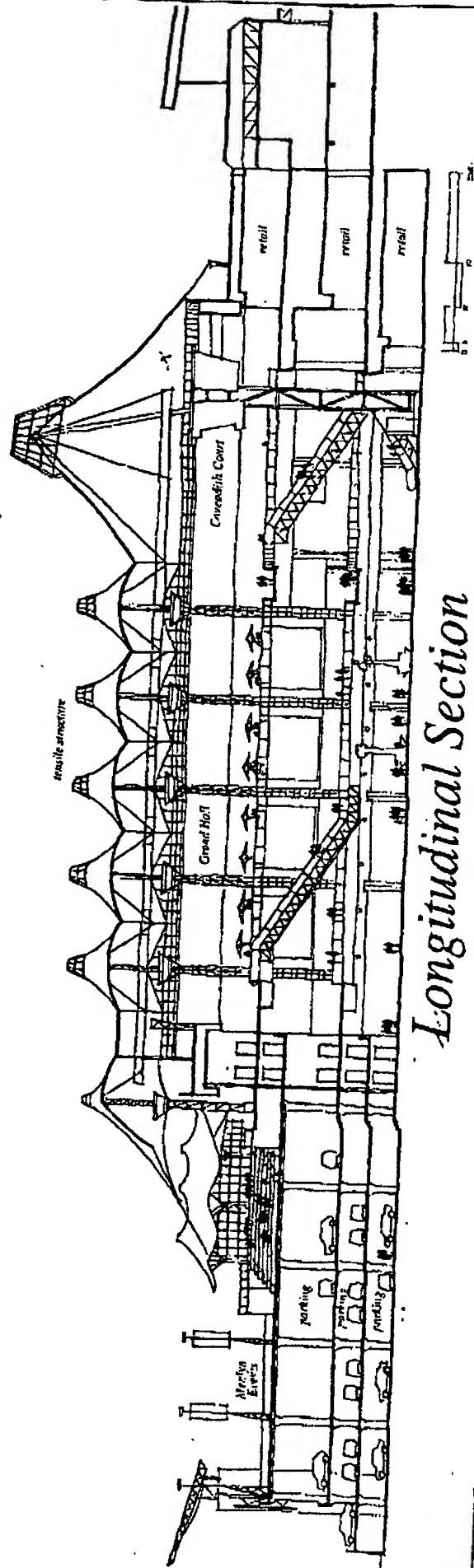
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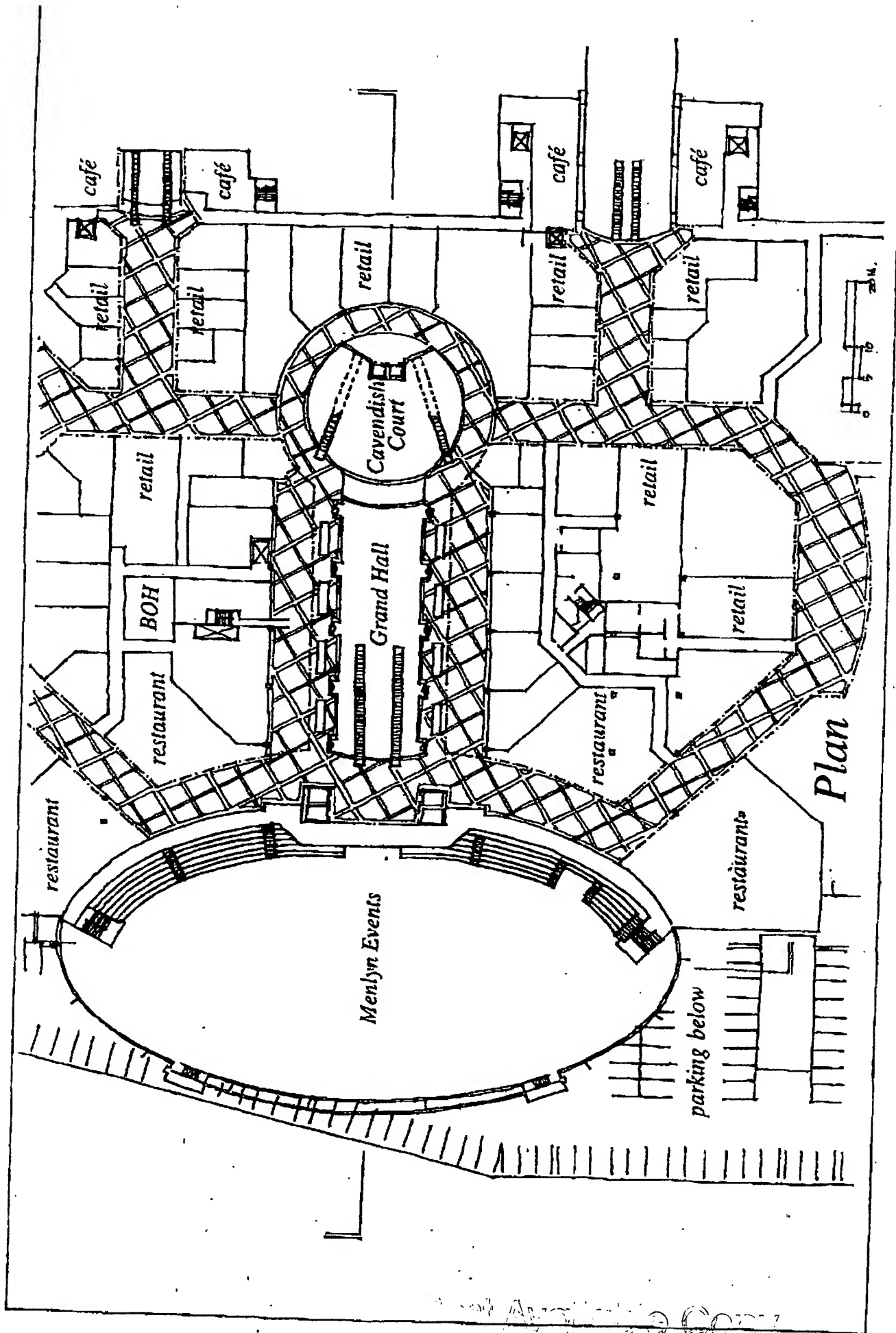


Cross Section

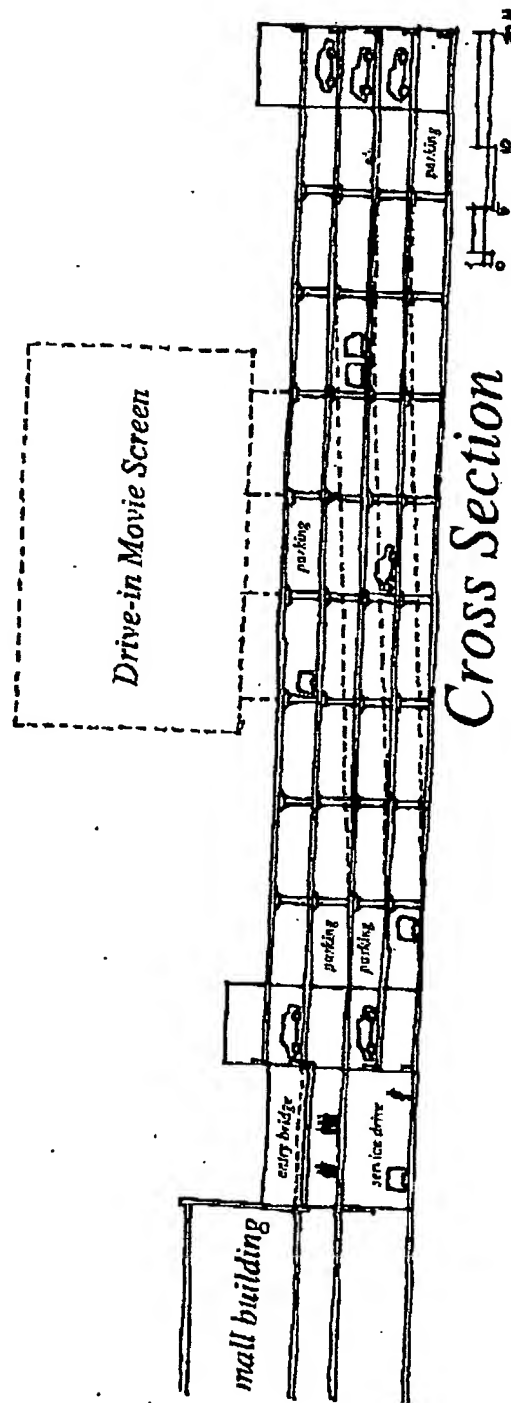


Longitudinal Section

# EVENTS ARENA

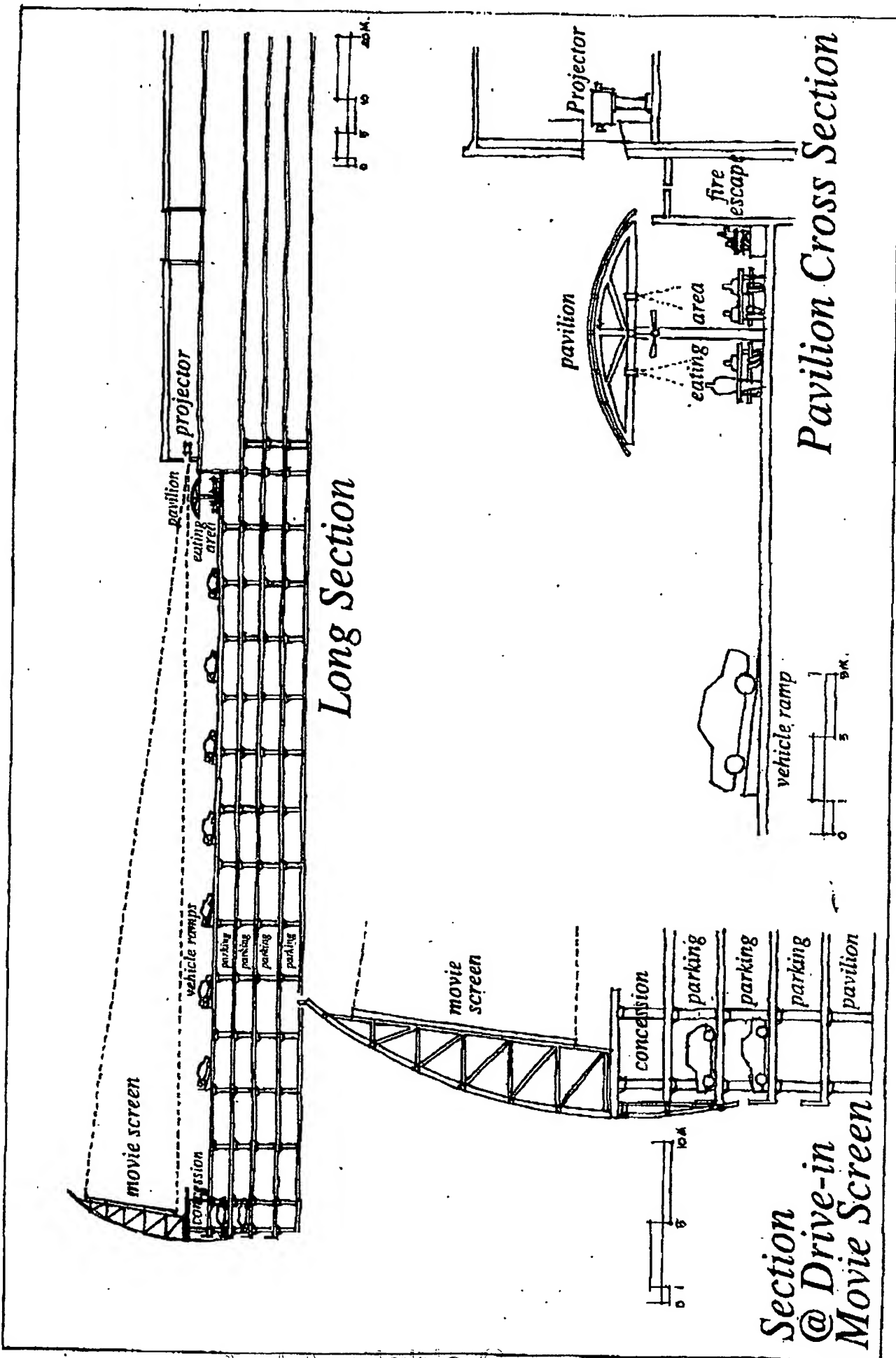


# DRIVE IN MOVIE

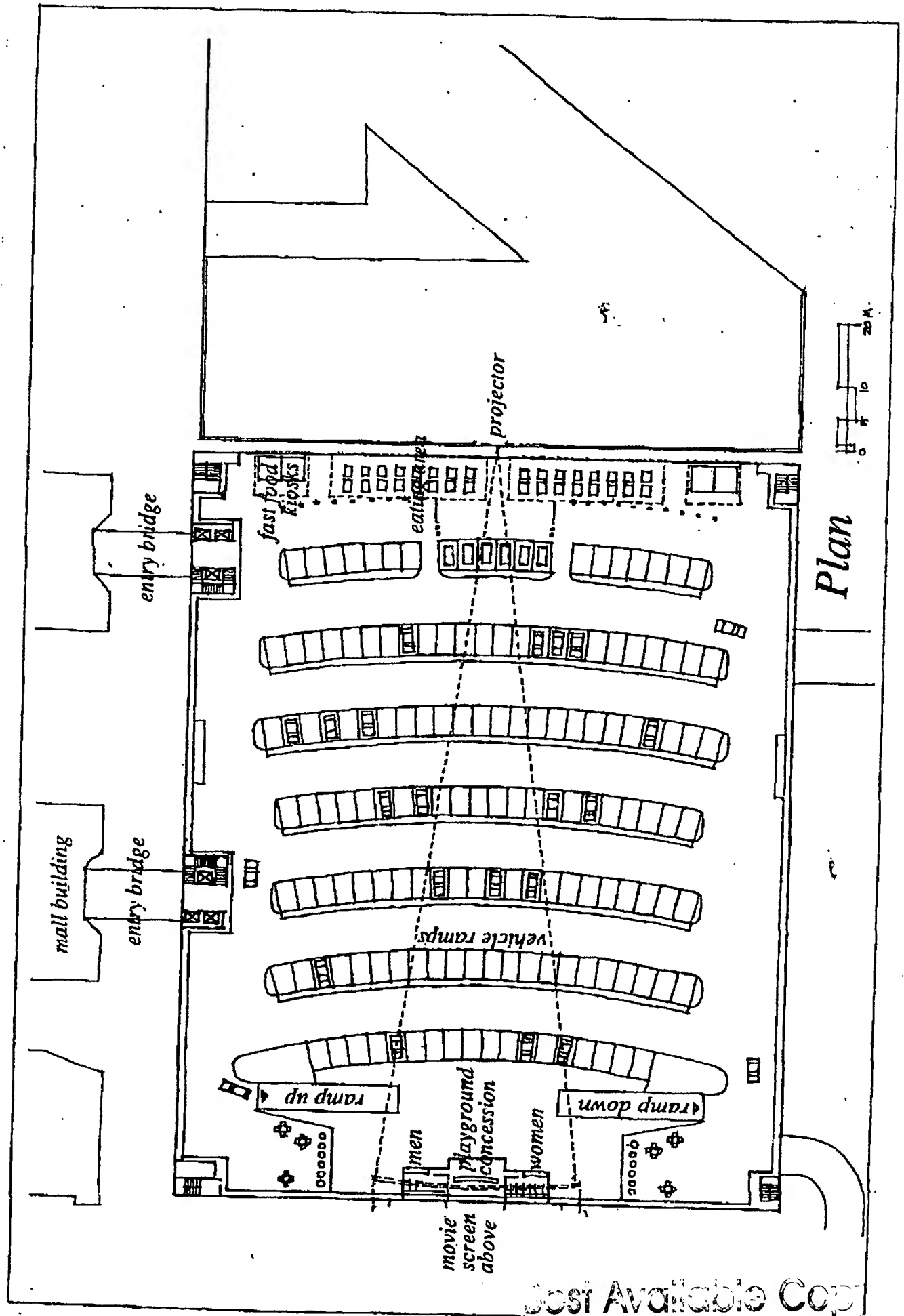


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# DRIVE IN MOVIE

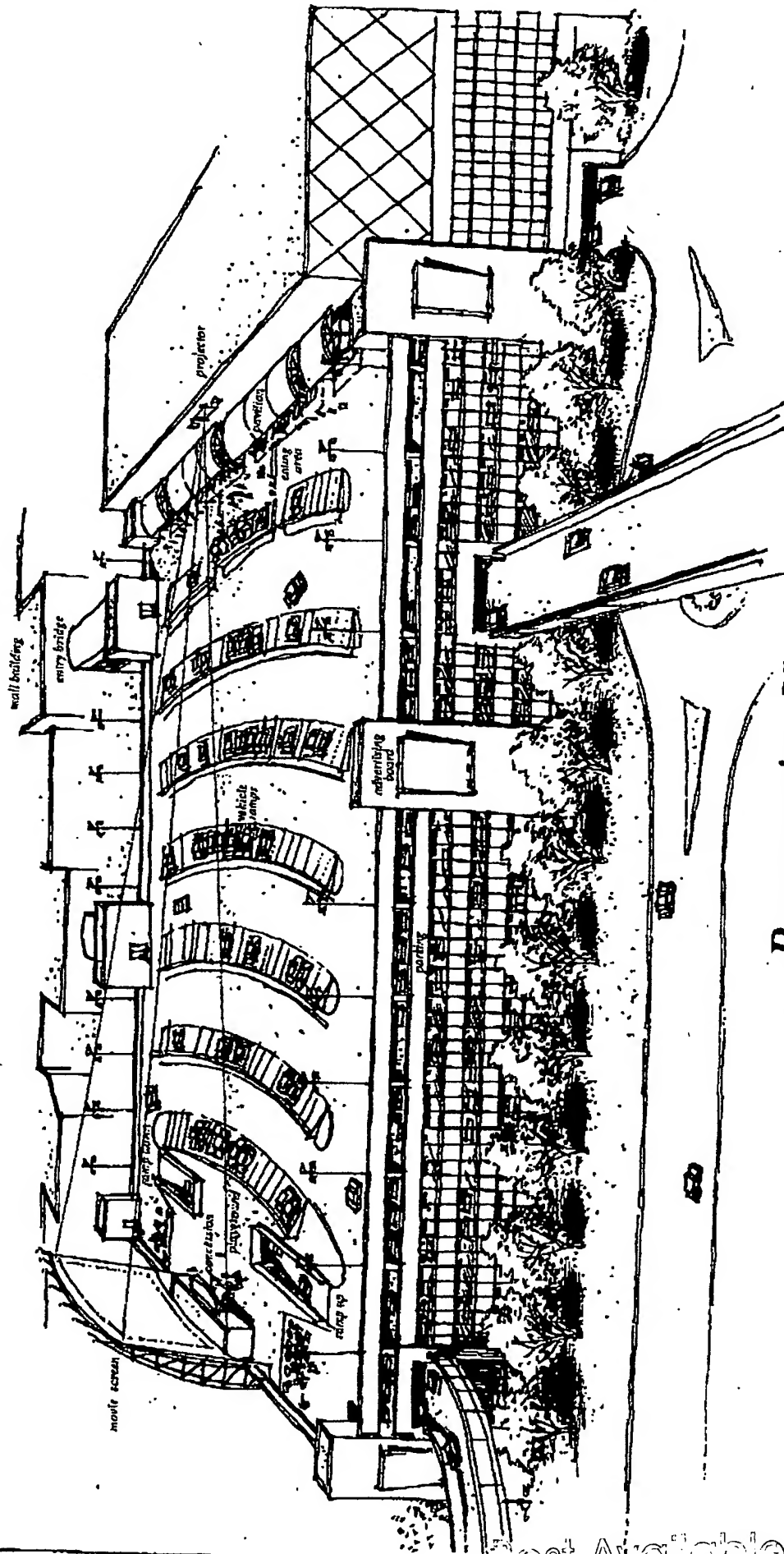


DRIVE IN MOVIE



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# DRIVE IN MOVIE



Perspective View

Figure 6 is a site plan of the shopping center of the present invention including the parking garage 1 with the drive-in movie theater on top, and an event center 37 located on or adjacent the shopping mall 33. The combination of the drive-in movie theater 2 and the event center 37 with the shopping mall 33 allows individuals to walk directly back and forth from each of these areas in a convenience manner. For example, someone who attends the drive-in movie theater can simply walk across one of the pedestrian bridges 31 into the shopping mall to do some shopping or eat at a restaurant or attend some other establishment or event. Because the event center 37 is also attached to the shopping mall 33, people attending the event center can likewise enter into the shopping mall directly. The combination also enables persons attending the event center to also go directly to the drive-in movie theater.

As shown in Figures 8 and 9, the event center 37 of the present invention is also located on top of a parking garage or structure 39. This enables the shopping center of the present invention to maximize the use of available land which can be scarce in certain areas. The objective is to build a parking garage which is directly connected to the shopping mall such that persons parking there can enter into the mall. By virtue of having the event center located on top of the parking garage, persons who desire to attend the event center 37 can simply park their cars in the parking garage and travel up the stairs, escalators and/or elevators to the upper level where the event center is located.

The event center 37 is preferably an outdoor auditorium with an area for a stage and backstage, and a perimeter area for seating, such as for bleachers and chairs. Although any type of auditorium or structure in which people can gather can be provided, the preferred embodiment relates to an auditorium with stadium-type seating, wherein the events that take place in

the auditorium can be viewed by the maximum number of people possible within the confines of the area.

Another feature provided by the present invention is that restaurants and other eating establishments can be located adjacent to and around the perimeter of the event center 37. These restaurants preferably have a seating area and/or windows that overlook the auditorium such that people who attend the restaurants can sit and view the activities in the event center. Premium seating involving eating at the restaurant and viewing the event can be provided in this manner.

In one embodiment, the parking areas under the event center 37 are preferably directly connected to the parking areas within the parking garage 1 where the drive-in movie theater 2 is located. This way, people who park their cars under the event center 37 can go directly to the drive-in movie theater 2 at the appropriate time without having to maneuver through traffic around the mall.

Figure 7 shows the event center 37 adjacent to the shopping mall 33 wherein a number of restaurants and retail establishments as well as atriums and open spaces are provided therewith. An open-hall environment is preferred so that the design is aesthetically pleasing and inviting to those who attend the mall.